
OLR Bill Analysis

sSB 1140

AN ACT CONCERNING THE DUTIES OF A CONSERVATOR AND OTHER PERSONS AUTHORIZED TO MAKE DECISIONS RELATING TO THE CARE AND DISPOSITION OF A DECEASED PERSON'S BODY.

SUMMARY:

This bill makes various changes concerning the disposition of a body after a person's death. It allows an agent with power of attorney to execute a written document in advance of the principal's death, (1) directing the body's disposition upon death or (2) designating someone to have custody and control of the disposition upon death. It gives the same authority to a conservator to execute such a document in regard to the conserved person's body after death, but only if the probate court expressly authorizes it. Under the bill, such documents are subject to the same conditions as advance directives that people execute to direct the disposition of their own bodies after death.

The bill generally prohibits someone with custody and control of the disposition of a deceased person's body from knowingly providing for disposition in a manner inconsistent with (1) the person's own advance directive or (2) a conservator's or agent's document as described above. A contrary disposition is allowed if approved by the probate court.

The bill generally sets out that when multiple people have equal disposition rights over a deceased relative's body, a majority make the decision.

In certain circumstances, the bill also disqualifies anyone charged with murder or 1st degree manslaughter in connection with a deceased relative from participating in disposition arrangements for the body.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2013

DISPOSITION OF BODY AFTER DEATH

Conservators and Agents

The bill extends to the documents that agents and conservators can execute to direct a disposition after death the same conditions as advance directives that people execute for disposing of their own bodies. Thus, such a document must be subscribed by the agent or conservator and attested by two witnesses. The document can:

1. direct the body's disposition after death (e.g., cremation, burial);
2. designate an individual to (a) have custody and control of the body after death and (b) if applicable, carry out the directions for disposition; or
3. do both of the above.

If the document designates an individual, it can also designate an alternate.

Under the bill, other provisions in existing law regarding advance directives for disposition apply to disposition documents executed by agents or conservators. This includes a general prohibition on challenging a funeral director's decision to carry out disposition directions contained in such a document. Also, a later properly executed document by a conservator or agent would revoke any previous document executed by the conservator or agent.

Existing law sets out a model form for an individual's advance directive for disposition of his or her body. The bill does not set out a similar model form for use by agents or conservators.

Disposition By Next of Kin in Absence of Designation

Under existing law, the right to custody and control of a deceased person's body belongs to the person's next of kin if (1) the person did not designate an individual in an advance directive or (2) any

designated individual or alternate decline to act or cannot be located within 48 hours after the death or discovery of the body. The first priority for having custody and control generally rests with the surviving spouse, if any, and subsequent priority rests with other relatives (see BACKGROUND). Such custody and control are subject to any disposition directions in the deceased person's advance directive. The same rules apply under the bill concerning agents' or conservators' written documents.

Also, if (1) there is no surviving spouse or the spouse does not have priority and (2) multiple other relatives have equal priority, the bill provides that custody and control of the body rest in a majority of such relatives who can be located and who indicate, in writing, their willingness to participate in making disposition arrangements within a reasonable time.

Disqualification Due to Murder or 1st Degree Manslaughter

The bill disqualifies a spouse or other person otherwise entitled to participate in making disposition arrangements for a decedent from doing so if:

1. the person was charged with murder, murder with special circumstances, felony murder, arson murder, or 1st degree manslaughter with or without a firearm, in connection with the decedent's death;
2. the funeral director is aware of the charges; and
3. the charges are pending or the person has been found guilty.

BACKGROUND

Order of Priority for Making Disposition Arrangements

By law, the remains of a deceased person belong to the person's next of kin, unless he or she legally appointed someone else before death. In this context, the next of kin, in order of priority, are the decedent's:

1. surviving spouse, unless the spouse abandoned the decedent or

- a court has adjudged the spouse to be incapable;
2. surviving adult children;
 3. surviving parents;
 4. surviving siblings;
 5. any other adult in the next degree of kinship in the order named by law to inherit the decedent's estate, provided that person is within the third degree of kinship or higher (e.g., aunts, uncles, grandparents); and
 6. another adult chosen by the probate court.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/16/2013)